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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 MAURICE P. OLIVIER,

12 Plaintiff,

13 v.

14 GLORIA MOLINA, et al.,

15 Defendants.
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NO. CV 08-7169-JFW (AGR)

ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, records
19 on file, and the Report and Recommendation of the United States Magistrate
20 Judge. Further, the Court has engaged in a *de novo* review of those portions of
21 the Report to which the parties have objected. The Court accepts the findings
22 and recommendation of the Magistrate Judge.

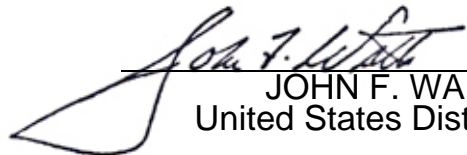
23 The Report recommended dismissal without prejudice of Claim Two for
24 failure to exhaust the cell infestation grievance other than lice. (Report at 13.)
25 Defendant objects because although Plaintiff started the exhaustion process, he
26 did not complete it. (Defendant Objections at 6.) However, Plaintiff was not
27 required to further exhaust the lice portion of his grievance because according to
28 Deputy Kelley, the Custodian of Records for the Men's Central Jail Legal Unit,

1 Plaintiff was seen and treated, his cell was inspected, and no lice were found.
2 (Dkt. No. 39, Kevin Kelley Decl. ¶¶ 1, 13 & n.1.); see *Brown v. Valoff*, 422 F.3d
3 926, 935 (9th Cir. 2005) (“a prisoner need not press on to exhaust further levels
4 of review once he has . . . received all ‘available’ remedies at an intermediate
5 level of review”).

6 Defendant's other objections and Petitioner's objections are without merit.

7 IT IS ORDERED that (1) the Report and Recommendation is adopted; (2)
8 Defendant's unenumerated Rule 12(b) motion based on failure to exhaust
9 remedies is granted in part and denied in part; (3) Defendant's Rule 12(b)(6)
10 motion to dismiss for failure to state a claim is granted in part and denied in part;
11 (4) Claim Two with respect to cell infestation other than lice is dismissed without
12 prejudice; (5) Defendant Baca in his individual capacity in Claim Two is dismissed
13 with prejudice; (6) both claims based on the Fifth Amendment are dismissed with
14 prejudice; (7) both claims based on the Standard Minimum Rules for the
15 Treatment of Prisoners are dismissed with prejudice; and (8) the failure to train
16 claim with respect to Claim Two is dismissed with prejudice.

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19 DATED: August 15, 2011

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22 JOHN F. WALTER
23 United States District Judge
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